

Proposal for Amendments to the Criminal Code

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American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

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Introduction

The world's leading economies consider the standards of intellectual property protection as one of the basic prerequisites for the success of the 21st century economy based on growth through innovative technologies. In the business world, where innovation, creativity and quality are increasingly more important than the price of products and services itself, intellectual property is a powerful tool of companies in achieving global competitiveness. Countries with effective intellectual property protection attract industries that generate high-value jobs, attract foreign direct investments that provide access to advanced technologies, and invest significant resources in research and development. Moreover, strong implementation of intellectual property rights in a country is a positive indicator for foreign investors and it helps attract greenfield investments, regardless of size, economic development and geographic location of the country.

The biggest challenge for intellectual property right holders in Croatia, from AmCham's point of view, lies in strengthening the enforcement of legislation that prescribes intellectual property rights and the lack of specialized courts to deal with the above mentioned procedures. In connection with this topic, AmCham previously adopted the position paper "Recommendations for Improving the Enforcement of Intellectual Property Protection in Croatia", which provided a range of recommendations to improve the efficiency of intellectual property rights protection. One of the specific recommendations was to specify, based on good practices of other countries (for example, Slovenia and the USA), relevant provisions in the Croatian Criminal Code that would provide a clear framework for determining the amount of damage caused and material gain acquired. This would enable easier and more effective prosecution of cases in the field of intellectual property protection that enter the domain of criminal law.

Seeing as these provisions have not been introduced to the Croatian Criminal Code to this day, in this document AmCham provides its position, i.e. proposal for specific amendments to the current Criminal Code. These amendments would enable precise determination of damage caused and material gain realized in cases of infringements of intellectual property rights that belong to the domain of criminal law. Furthermore, AmCham proposes reducing the threshold for the criminal prosecution of infringements of intellectual property rights (the category of "considerable damage" caused in accordance with the Criminal Code) from HRK 60,000.00 to HRK 30,000.00, with the aim of active discouragement of this type of behavior.

Proposal for Amendments to the Criminal Code

In order to resolve the existing legal uncertainty caused by the lack of a clear model and method of determination of the amount of damage caused and material gain acquired, AmCham proposes the following amendments to the current Criminal Code:

Including an article specifying the procedure for determining the amount of damage caused and material gain acquired into the current text of the Criminal Code

In the current version of the Criminal Code¹, provisions relating to criminal offences against intellectual property are covered by Title XXVII, Articles 284 to 290.

With the aim of more efficient prosecution of this type of cases, AmCham proposes to enter a new article, 289.a, in the text of the Criminal Code in addition to the stated articles, in order to define the method of determination of the amount of damage caused and material gain acquired.

We propose that the stated article reads as follows:

Article 289.a Determining the amount of damage caused and material gain acquired

For the purposes of criminal proceedings conducted for a criminal offence from Articles 285, 286, 287, 288 and 289 of this Title XXVII of the Code, the value of damage is determined by multiplying the quantity of products infringing upon the appropriate intellectual property right with the retail price of the original product protected by an appropriate intellectual property right that was valid on the market at the time the criminal offence was committed, value added tax excluded.

In cases when the right holder does not produce goods of the appropriate kind, the value of damage is determined based on the amount that the right holder could have requested in light of the circumstances in the license agreement, had it been concluded.

For the purposes of criminal proceedings conducted for a criminal offence from Articles 285, 286, 287, 288 and 289 of this Title XXVII of the Code, the value of material gain is determined based on the quantity and retail price of the product infringing upon the appropriate intellectual property right.

¹ Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17

Reduction of the threshold for criminal prosecution of infringements of intellectual property rights (value of the category of “considerable damage”) from HRK 60,000.00 to 30,000.00

According to the current Criminal Code, the perpetrator of an offence against intellectual property is criminally responsible if as a result of the criminal offence he “acquires considerable material gain or causes considerable damage”. In accordance with Article 87, paragraph 29 of that Code, the value of material gain and damage is considerable if it exceeds HRK 60,000.00. Cases in which the value of material gain and damage caused is estimated to be lower than the stated threshold are prosecuted within the framework of misdemeanor law.

With the aim of better protection of intellectual property rights AmCham hereby proposes to reduce the threshold for classifying material gain or damage caused as “considerable” from HRK 60,000.00 to HRK 30,000.00 for the cases of infringement of intellectual property rights.

This could potentially further discourage infringements of intellectual property rights, as well as encourage the reporting of this type of criminal offence, which is particularly important in light of the fact that, according to the information of the Ministry of the Interior², the number of criminal offences due to the infringement of intellectual property rights from 2012 to 2016 has been constantly decreasing, while at the same time the experiences of the economic community bear witness to an actual increase in the number of such cases.

² http://www.dziv.hr/files/file/provedba/statistika/2016/stat_ppiv_2016_HR.pdf

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